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November 8, 2021

BY ECF

Hon. Nelson S. Román
 United States District Court
 Southern District of New York
 300 Quarropas St.
 White Plains, NY 10601-4150

Re: *Ball v. Baker et al.*, 7:21-cv-06418-NSR

Dear Judge Román:

On behalf of defendants—current and former officers and members of the Board of Directors (the “Board”) of Regeneron Pharmaceuticals, Inc. (“Regeneron” or the “Company”)—we write to seek leave to file under seal information that this Court has previously determined to be confidential pursuant to Rule 4.A of Your Honor’s Individual Rules of Practice in Civil Cases.

Specifically, to preserve the confidentiality of Regeneron’s proprietary information, defendants seek to file under seal their: (1) memorandum in opposition to plaintiff’s motion to remand; (2) memorandum in support of the motion to dismiss; and (3) reply memorandum in further support of the motion to dismiss. These papers contain a detailed discussion of portions of the Complaint that this Court has previously determined should be redacted. Defendants will file appropriately redacted versions of these papers on the public docket.

By way of background, on June 29, plaintiff Donald A. Ball commenced this purported derivative action in the Supreme Court of the State of New York, County of Westchester. The publicly filed version of plaintiff’s complaint included certain redactions of allegations that contained non-public, confidential, proprietary and commercially sensitive information of Regeneron, including the contents of confidential board and audit committee minutes, policies, board presentations, and internal company emails.

MEMO ENDORSED

Regeneron produced these materials to plaintiff in response to his demand to inspect company books and records, and in reliance on the terms of a Confidentiality Agreement between Regeneron and plaintiff, in which plaintiff agreed that “irreparable damage to the Company would occur in the event” of disclosure of confidential information, ECF 1 Ex. 2 at ¶ 24. Plaintiff further agreed to “redact all references to Confidential Information in any pleadings filed with the court.” *Id.* at ¶ 13.

On July 28, 2021, this Court permitted defendants to file the unredacted Complaint under seal and to publicly file the redacted Complaint as part of their removing the case to this court. Additionally, on August 16, 2021, Your Honor approved plaintiff’s request to file his pre-motion letter under seal and simultaneously file the redacted version on the public docket. ECF 19. Courts in the Second Circuit similarly recognize the importance of protecting against public disclosure of confidential business information where such disclosure could cause competitive harm, and have permitted parties to protect such information by filing documents under seal or with redactions. *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110 (2d Cir. 2006); *Mark v. Gawker Media LLC*, 2015 WL 7288641, at *2 (S.D.N.Y. Nov. 16, 2015) (granting request for redactions “[i]n the interest of protecting confidential business information”) (citing *Standard Inv. Chartered, Inc. v. FINRA*, 2009 WL 2778447, at *2 (2d Cir. 2009) (upholding district court’s finding that the defendant’s interest in protecting the confidential business information at issue outweighed the qualified presumption of public access)).

Accordingly, and consistent with this Court’s prior orders, defendants respectfully seek leave to file memoranda in opposition to plaintiff’s motion to remand and in support of defendants’ motion to dismiss relief under seal, and to file on the public docket versions of these papers with the appropriate redactions.

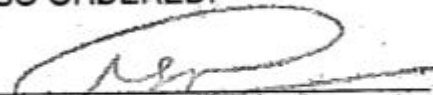
Respectfully submitted,

/s/ H. Christopher Boehning
H. Christopher Boehning

The Court GRANTS Defs.’ leave to file their memoranda in opposition to Pl.’s motion to remand and in support of Defs.’ motion to dismiss under seal, and to file on the public docket versions of these papers with the appropriate redactions.

The Clerk of the Court is kindly directed to terminate the motion in ECF No. 22.

Dated: November 9, 2021
White Plains, NY

SO ORDERED:

HON. NELSON S. ROMÁN
UNITED STATES DISTRICT JUDGE